

200742026



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUL 23 2007

UICs: 401.06-00  
401.06-02

LEGEND:

T: EP: RA: T3

Taxpayer A:

Taxpayer B:

Taxpayer C:

Court T:

Case D

County V:

State W:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

Date 11:

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Trust T:

Company U:

IRA X:

IRA Y:

Amount 1:

Dear :

This is in response to the request for a letter ruling submitted by your authorized representative on your behalf, as supplemented by correspondence dated and in which your authorized representative requests a letter ruling under sections 401(a)(9) and 408(a)(6) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 1926, died on Date 2, 2004 at age 78 having attained his "required beginning date" as that term is defined in Code section 401(a)(9)(C). At his death, Taxpayer A was a resident of State W. Taxpayer B, Taxpayer A's daughter, is his sole surviving heir as Taxpayer C, Taxpayer A's spouse, predeceased him having passed away on Date 5, 2004. Taxpayer B's date of birth is Date 3, 1958. Taxpayer B was alive as of the date of this ruling request.

At his death, Taxpayer A owned an individual retirement account (IRA X) with Company U. On or about Date 4, 1997, Taxpayer A named his spouse, Taxpayer C, as the primary beneficiary of his IRA X, and his daughter, Taxpayer B, as the secondary beneficiary thereof. On a subsequent beneficiary designation, dated Date 11, 2003, Taxpayer A again named his spouse, Taxpayer C, as the sole primary beneficiary of his IRA X. However, on this subsequent beneficiary designation, Taxpayer A neglected to name a secondary beneficiary of his IRA X.

It has been represented on your behalf that, subsequent to the demise of Taxpayer C, Company U mailed another beneficiary designation form to Taxpayer A so that Taxpayer A could name Taxpayer B as the beneficiary of his

IRA X. However, Taxpayer A died prior to signing said form. As a result, upon the death of Taxpayer C, the estate of Taxpayer A became the beneficiary of his IRA X. Taxpayer B is the sole personal representative of the estate of Taxpayer A.

Taxpayer A's Last Will and Testament is dated Date 6, 2001. Article II(C) of Taxpayer A's Last Will provides that if Taxpayer C does not survive him (as was the case), all tangible personal property (including IRA X) would pass to Trust T dated Date 7, 1989.

In order to conform to the presumed intent of Taxpayer A, on Date 8, 2006, Court T, County V, State W, a court of competent jurisdiction, in Case D, issued an order amending Taxpayer A's IRA X beneficiary designation pursuant to which Taxpayer B was named the beneficiary of said IRA X. The order indicated that Taxpayer B was to be treated as if Taxpayer A had named her as his IRA X beneficiary prior to his death.

On or about Date 10, 2004, Taxpayer B transferred, by means of a trustee-to-trustee transfer, IRA X to IRA Y. IRA Y was established and is being maintained in the name of Taxpayer A for the benefit of Taxpayer B. IRA Y's value as of Date 9, 2005, was Amount 1.

It has been represented on your behalf that a distribution intended to comply with the minimum required distributions rules of Code sections 401(a)(9) and 408(a)(6) was taken from IRA Y during calendar year 2005 based on the life expectancy of Taxpayer A.

Based on the above facts and representations, you, through your authorized representative, request the following letter ruling:

That Taxpayer B may be treated as the "designated beneficiary", as that term is defined in Code section 401(a)(9)(C), of IRA X (now IRA Y). As a result, Code section 401(a)(9) minimum required distributions for calendar year 2006 and all subsequent calendar years may be calculated based on Taxpayer B's remaining life expectancy (calculated and reduced as provided in the Regulations referenced below).

With respect to your letter ruling request, Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee-

- (i) will be distributed to such employee not later than the required beginning date, or

- (ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Code section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Code section 401(a)(9)(B)(i) provides, in general, that if an employee (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (A)(ii) (after his required beginning date), then his entire remaining interest must be distributed as least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of his death.

Code section 401(a)(9)(C) provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70 1/2.

Code section 401(a)(9)(E) defines "designated beneficiary" as any individual designated as a beneficiary by the employee (IRA holder).

Section 1.401(a)(9)-4 of the Regulations, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under the plan. An individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan so provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. Q&A-1 further provides that the passing of an employee's interest to an individual under a will or otherwise under applicable state law will not make that individual a designated beneficiary under section 401(a)(9)(E) unless that individual is designated as a beneficiary under a plan.

Section 1.401(a)(9)-4 of the Regulations, Q&A-3, provides, in relevant part, that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary.

Section 1.401(a)(9)-4 of the Regulations, Q&A-4(a), provides, in relevant part, that in order to be a designated beneficiary, an individual must be a

beneficiary as of the date of the employee's death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death.

Section 1.401(a)(9)-5 of the Regulations, Q&A-5(a), provides that if an employee dies on or after his required beginning date, in order to satisfy section 401(a)(9)(B)(i), the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is either-

- (1) if the employee has a designated beneficiary as of the date determined under A-4 of section 1.401(a)(9)-4, the longer of—
  - (i) the remaining life expectancy of the employee's designated beneficiary determined in accordance with paragraph (c)(1) or (2) of this A-5; and
  - (ii) the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A-5; or
- (2) if the employee does not have a designated beneficiary as of the date determined under A-4 of section 1.401(a)(9)-4, the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A-5.

Section 1.401(a)(9)-5 of the Regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-5 of the Regulations, Q&A-5(c)(3), provides that if an employee does not have a designated beneficiary, the applicable distribution period measured by the employee's remaining life expectancy is the life expectancy of the employee using the age of the employee as of the employee's birthday in the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year of the employee's death.

The term "designated" beneficiary is a term used in Code section 401(a)(9) to determine the measuring life used to compute the period over which distribution of an employee's or IRA owner's account balance must be made to the employee/IRA owner and his/her designated beneficiary. Section 1.401(a)(9)-5, Q&A-5(a)(2) of the Regulations provides, in summary, that if an employee dies on or after his required beginning date *without* having designated a beneficiary, then post-death distributions must be made over the remaining life expectancy of the employee. However, if such employee dies on or after his required beginning date *with* a designated beneficiary, the applicable distribution period is the longer of the remaining life expectancy of the designated beneficiary, and the remaining life expectancy of the employee.

With respect to your ruling request, the Service notes that the applicable beneficiary form contained no designated beneficiary at Taxpayer A's death on Date 2, 2004 and that as a result, Taxpayer A's estate was the beneficiary of Taxpayer A's IRA X at the time of his death. Except for certain exceptions not applicable here, section 1.401(a)(9)-4, Q&A-3 of the Regulations, provides that where an estate is designated beneficiary, the decedent will be treated as having no designated beneficiary. Taxpayer B, through her authorized representative, asserts that Court T order referenced above designating her as beneficiary of the IRA and which was issued nearly two years after Taxpayer A's death should be given effect for purposes of allowing a retroactive beneficiary designation.

We believe that the Code and regulations are clear as to the requirements of naming a designated beneficiary and the timing of the beneficiary designation and do not permit the exception sought here. Section 1.401(a)(9)-4, Q&A-1 of the Regulations provides that a designated beneficiary is an individual designated as a beneficiary under the terms of the IRA or by an affirmative election of the IRA owner. Moreover, "[t]he fact that an [IRA owner's] interest passes to a certain individual under a will or under otherwise applicable state law does not make that individual a designated beneficiary unless the individual is designated as a beneficiary under the [IRA]". Under Q&A-4 of section 1.401(a)(9)-4 of the Regulations, only individuals who are beneficiaries under the IRA on the IRA owner's death, and who remain beneficiaries as of September 30 of the following year, can be "designated beneficiaries" for purposes of section 401(a)(9). As described in the Preamble to these regulations, "[t]he period between death and the beneficiary determination date is a period during which beneficiaries can be eliminated but not replaced with a beneficiary not designated under the [IRA] as of the date of death". Preamble to section 1.401(a)(9) of the Regulations, T.D. 8987 (04/16/2002) ("Determination of the Designated Beneficiary"). If there is no designated beneficiary under these rules, and the IRA owner died after the required beginning date, the IRA assets must

be paid out over a period not longer than the remaining life expectancy of the IRA owner.

Thus, the statute and applicable regulations clearly describe the method to determine the designated beneficiary and provide a specific mechanism to achieve a post-required beginning date payout period longer than the IRA owner's remaining life expectancy – the IRA owner merely has to ensure that at least one individual is designated as beneficiary under the IRA as of his date of death. In this case, no living person was named, as either primary or contingent beneficiary, on that date. Accordingly, under the foregoing rules, Taxpayer A must be treated as having no designated beneficiary as of his death under section 401(a)(9) and the timing of distributions under the IRA must reflect this and be paid out over a period not longer than Taxpayer A's remaining life expectancy.

Thus, with respect to your ruling request, the Service concludes as follows:

That Taxpayer B may not be treated as the "designated beneficiary", as that term is defined in Code section 401(a)(9)(C), of IRA X (now IRA Y). As a result, Code section 401(a)(9) minimum required distributions for calendar year 2006 and all subsequent calendar years may not be calculated based on Taxpayer B's remaining life expectancy (may not be calculated and reduced as provided in the Regulations referenced above as if there is a "designated beneficiary"). Instead, Code section 401(a)(9) minimum required distributions must be calculated based on the remaining life expectancy of Taxpayer A (as provided in section 1.401(a)(9)-5 of the Regulations, Q&A-5(c)(3)).

This ruling letter is based on the assumption that IRA X either has met, is meeting, or will meet the requirements of Code section 408(a) at all times relevant thereto. Furthermore, it assumes that IRA Y will also meet the requirements of Code section 408(a) at all times relevant thereto.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

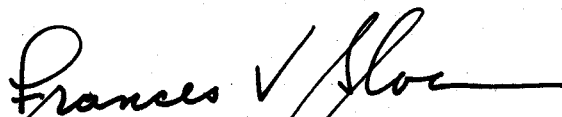
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this ruling letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

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If you wish to inquire about this ruling, please contact  
Esquire (ID: ) at either 202-283- (Phone) or 202-  
283- (FAX). Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name.

Frances V. Sloan, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose